

FACTSHEET

TITLE: **USE PERMIT NO. 132A**, an amendment to **Willowbrook**, requested by Mark Hunzeker on behalf of Livingston Investments, Inc., to eliminate the restriction on the hours of operation for Lot 1, Willowbrook, to allow 24-hour operation, on property generally located southeast of the South 70th Street and Highway 2 intersection.

STAFF RECOMMENDATION: Conditional Approval

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/05/05
Administrative Action: 01/05/05

RECOMMENDATION: Conditional approval (6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent).

FINDINGS OF FACT:

1. Note C of the original use permit restricted the hours of operation of the shopping center to not allow operation from 5:00 a.m. to midnight. This request seeks to amend that note to allow 24-hour operation on Lot 1, but leave the restriction intact for the remaining lots in the development. The amendment is requested to allow a sit-down type restaurant which operates 24 hours a day.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.3, concluding that some of the uses allowed in the B-2 Planned Neighborhood Business District are uses that may operate 24 hours a day. The limitation on hours was included by the developer at the request of surrounding property owners. Provided the developer and surrounding property owners have reached agreement on the elimination of the restriction, staff does not object.
3. The applicant's testimony is found on p.6, and the photographs submitted by the applicant at the public hearing are found on p.12-14. The proposed 24-hour restaurant business is an IHOP.
4. Testimony in opposition on behalf of the Family Acres Neighborhood Association is found on p.6. The Association does not believe there is sufficient buffer or transition to the two residential areas.
5. The applicant's response to the opposition is found on p.7, indicating that there is nothing else that could be done to further buffer the site, noting that the specific site is cut down at least 10-15 feet. The applicant further suggested that the greater impact on the residential areas would be from the existing city road improvements rather than any impact from the proposed use on Lot 1.
6. Commissioner Carlson inquired about signage and the applicant indicated that there would be no pole sign for this individual building.
7. On January 5, 2005, the Planning Commission agreed with the staff recommendation and voted 6-0 to recommend conditional approval, as set forth in the staff report dated December 20, 2004. The conditions of approval are found on p.3-5.
7. The Site Specific conditions of approval required to be completed prior to scheduling this application on the City Council agenda have been satisfied.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: January 14, 2005

REVIEWED BY: _____

DATE: January 14, 2005

REFERENCE NUMBER: FS\CC\2005\UP.132A

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for January 5, 2004 PLANNING COMMISSION MEETING

P.A.S.: Use Permit #132A - Willowbrook

PROPOSAL: Eliminate the restriction on the hours of operation for Lot 1, Willowbrook from 5:00 a.m. to midnight to allow 24 hour operation.

LOCATION: Southeast of the South 70th Street and Highway 2 intersection.

CONCLUSION: Some of the uses allowed in the B-2 Planned Neighborhood District are uses that may operate 24 hours a day. The limitation on hours was included by the developer at the request of surrounding property owners. Provided the developer and surrounding property owners have reached agreement on the elimination of the restriction, staff does not object.

RECOMMENDATION:	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1-6 and Outlots A and B, Willowbrook Addition, Lancaster County, Nebraska.

EXISTING ZONING: B-2 Planned Neighborhood Business, O-3 Office Park

EXISTING LAND USE: Lots 2, 4, and 6 have been developed commercially. Lots 1, 3, and 5 are undeveloped. Outlot B is zoned O-3 and has been designated for future development, but no specific development plan has been approved.

SURROUNDING LAND USE AND ZONING:

North:	Hwy 2/Church	AGR
South:	Undeveloped, Residential	AGR
East:	Undeveloped, Residential	AGR
West:	Residential	AGR

HISTORY: December 4, 2000 - ANN#00005, CZ#3282, and UP#132 were approved for Willowbrook to allow a change of zone from AGR to B-2 and O-3 and up to 187,000 square feet of commercial floor area.

COMPREHENSIVE PLAN SPECIFICATIONS: Page F25 - This site is designated for commercial land uses and the location for a commercial center in the Comprehensive Plan.

ANALYSIS:

1. Several limitations upon the uses allowed within Willowbrook were approved as part of the use permit (see attached notes from UP#132 provided by the applicant). Note C limited the hours of operation of the shopping center from 5:00 a.m. to midnight. This request seeks to amend that note to allow 24-hour operation on Lot 1, but leave the restriction intact for the remaining lots in the development. The amendment is requested to allow a sit-down type restaurant which operates 24 hours a day.
2. Of the uses allowed in the B-2 district per Title 27 Chapter 27.31, some are uses that by their nature operate 24 hours a day. As a use permit district, the intent of the B-2 Planned Neighborhood Business District was to be compatible with residential areas and help provide commercial services to serve the surrounding neighborhood. The Environmental Performance Standards of the City of Lincoln Design Standards also apply to the B-2.
3. A sit-down restaurant is an allowed use in the B-2, and is compatible with this development.
4. The lot affected by this amendment is located in the northwest corner of the development at the intersection of South 70th Street and Highway 2. Proximity to the intersection makes it a less sensitive site than the others in the center.
5. The prohibition of uses with on-sale consumption of alcohol as the primary source of business remains in effect for the entire development.
6. During the public hearings on the use permit in 2000, concerns were raised over the impact of the development upon surrounding properties. Some of the limitations upon uses in the center as expressed in the notes were in response to those concerns.
7. During the review the applicant was informed that a restaurant is an allowed use in the B-2 and that staff did not object to the proposed amendment. However, staff also recommended that the applicant meet with the neighbors to address any concerns they may have and to reach agreement on the amendment prior to the public hearings.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the site plan to show:
 - 1.1.1 Note C amended to read as follows: "THE HOURS OF OPERATION OF THE SHOPPING CENTER SHALL ONLY BE ALLOWED BETWEEN 5:00 A.M. TO 12:00 MIDNIGHT, EXCEPT FOR THOSE USERS LOCATED UPON LOT

1, WHICH ARE PERMITTED TO OPERATE 24 HOURS PER DAY.”

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 2.1.1 Submit six copies of a final site plan as approved.
 - 2.2 The construction plans comply with the approved plans.
 - 2.3 Final plat(s) is/are approved by the City.

Standard

3. The following conditions are applicable to all requests:
 - 3.1 Before occupying the buildings all development and construction is to comply with the approved plans.
 - 3.2 All privately-owned improvements, including landscaping, are to be permanently maintained by the owner or an appropriately established homeowners association approved by the City.
 - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.

4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by

Brian Will
Planner
December 20, 2004

APPLICANT/

OWNER: Livingston Investments, Inc.
7420 Yankee Hill Road
Lincoln, NE 68516
(402) 423-4477

CONTACT: Mark Hunzeker
PO Box 95109
Lincoln, NE 68509
(402) 476-7621

USE PERMIT NO. 132A

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Peter Katt** appeared on behalf of the applicant, **Livingston Investments**. This is an application to amend Use Permit No. 132 on a project on Highway 2 that includes the Home Depot site. Katt submitted photographs and explained that the applicant is seeking to amend a provision that restricts the hours of operation of all uses on all areas in the shopping center to not operate from midnight to 5:00 a.m. It was a requirement put into the use permit at the end because there were concerns of the neighbors that there might be some uses that would operate 24 hours and create problems for the neighbors. It was agreed that when and if a 24-hour operation came forward, there would be a requirement that it come forward for review of the specific use and location.

The proposed user is an IHOP, 24-hour restaurant business. Katt demonstrated on the map the location of the IHOP and the views from the proposed site. The building would primarily be visible from the Home Depot shopping center. The neighbor immediately to the south, First Choice Credit Union, is in support of another business in their neighborhood. Katt agreed with all conditions of approval set forth in the staff report.

Carlson inquired whether there would be any additional signage to make a more physical statement. Katt was not familiar with the sign requirements of this specific use permit, but the applicant is not proposing any amendments to the sign package approved as a part of the original use permit. The only sign they would be entitled to is the monument sign at the corner of the intersection, which is stone and the same color as the Home Depot sign, listing the individual users. There may be some permitted signage on the building, but none off-site. There will not be a large pole sign.

Opposition

1. **Steve Nickel**, 7941 Portsche Lane, President of the **Family Acres Neighborhood Assn.**, testified in opposition. He suggested that retail development was placed on this site because of its proximity to Hwy 2, but because it penetrates on two sides into existing residential neighborhoods, the restriction was placed on operating hours. No buffer or transition was provided between the retail area and the residential area, and the restriction on operating hours

was to be in lieu of buffer or transition. The residences are still in place. There is no buffer. There is no transition. Therefore, he believes there is no justification for removal of the operating hours restriction.

Taylor wondered whether a buffer and transition being in place would remove the neighborhood's problem with the extended hours. Nickel stated that if it adequately protected the residences, they would agree.

Staff questions

Carlson inquired as to the signage that is allowed in this use permit. Brian Will of Planning staff stated that there were no exceptions to the sign ordinance granted with this use permit; those signs allowed by the B-2 district would apply. Carlson thought they were further restrictions with the use permit. He referred to the pole sign at 27th & Superior Street. Will believes that a pole sign for the center would be allowed, but not for this individual building. He agreed with the applicant's testimony.

Response by the Applicant

Katt believes that the 27th & Superior site with a pole sign is zoned B-5 (as opposed to B-2). There is not a pole sign permitted here and there are no plans to have one. It is not permitted today. Unless there are some changes, a pole sign would not be allowed without further review and public hearing.

With regard to the opposition by Family Acres, Katt agreed that buffering to the neighborhood is an important consideration and criteria, which he believes has been demonstrated by the photographs. The applicant is unaware of anything else that could be done that may buffer it further. It appears that with this particular Lot 1 being cut down at least 10-15 feet, the greater impact on the neighborhood is from the existing city road improvements rather than any impact of the proposed use on Lot 1. Katt showed the distances from the residences on the map.

Carlson inquired whether the applicant is proposing a median cut. Katt pointed to the map and showed that the main entrance is further down on 70th Street.

ACTION BY PLANNING COMMISSION:

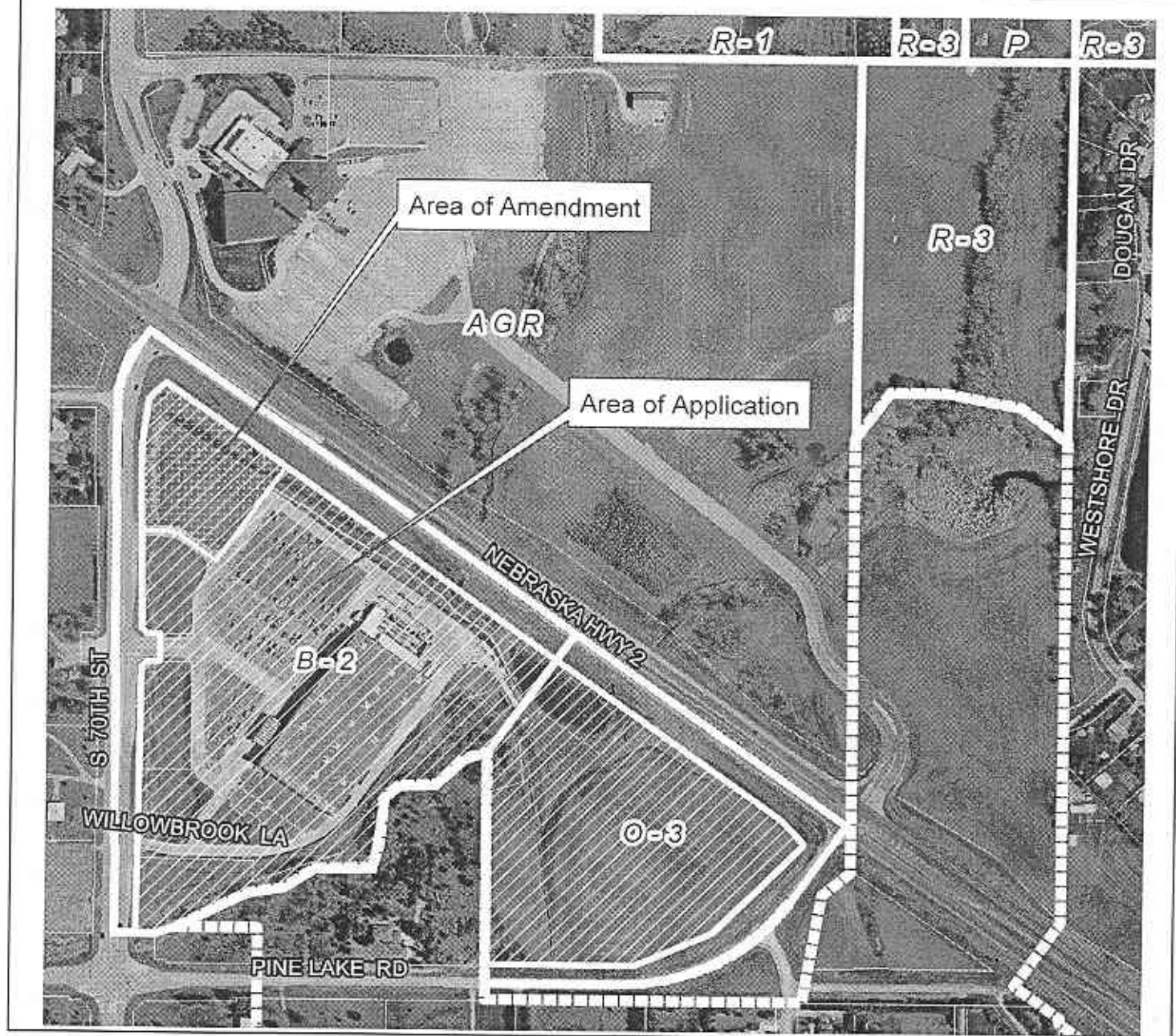
January 5, 2005

Taylor moved to approve the staff recommendation of conditional approval, seconded by Marvin.

Marvin commented that he has been to the Home Depot and believes there is a significant drop-off from that hill. He does not believe an IHOP, as opposed to an on-sale restaurant, will be as intrusive as one might think.

Carlson pointed out that the only restriction being waived is the operating hours between midnight and 5:00 a.m., so the building can be there at any time, but the question is whether it becomes more intrusive between midnight and 5:00 a.m.

Motion for conditional approval carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is a recommendation to the City Council.



Use Permit #132A **70th & Hwy 2** **Willowbrook**

2002 aerial

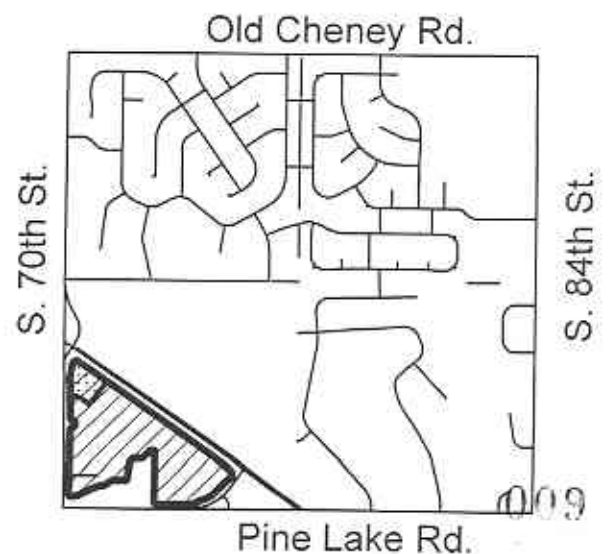
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
 Sec. 15 T09N R07E



Zoning Jurisdiction Lines
 City Limit Jurisdiction



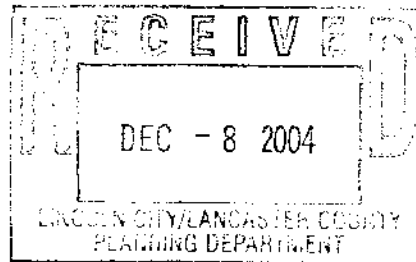
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December 8, 2004



Ray Hill
Planning Department
555 So. 10th Street, Room 213
Lincoln, NE 68508

Re: *Willowbrook Shopping Center Amendment to Use Permit No. 132*

Dear Ray:

On behalf of Livingston Investments, Inc. we are requesting an amendment to the City of Lincoln's Use Permit No. 132 which approved the Willowbrook Shopping Center at 70th and Highway 2. The specific amendment being requested is the removal of the hours of operation restriction upon Lot 1.

The removal of the hours of operation restriction on this lot will allow a quality sit-down restaurant to locate on a portion of the Lot. This nationally recognized chain has a business model which requires the ability to operate 24 hours a day. The amount of business generated by the facility between the hours of midnight and 5:00 a.m. would be extremely low.

Please also consider this letter a Certificate of Ownership that the Applicant, Livingston Investments, Inc. is the owner of the property upon which this amendment is sought.

Should you require any additional information, please feel free to contact me.

Sincerely,

Peter W. Katt
For the Firm
lawkatt@pierson-law.com

PWK:sb

Enclosure

(G:\WPData\PK\Livingston\Willowbrook 5053-800\Hill 12-8-4.ltr.wpd)

(SEE SCHEDULE BELOW)	(+/-)	BUILDING AREA (SEE IN SQ. FT.)	BUILDING HEIGHT (SEE NOTE D)	SPACE	RAILROAD
1	A THROUGH H (INCLUSIVE)	55,458	22,220	40 FT.	NOTE B:
2	BRANCH FINANCIAL FACILITY	22,879	5,712	40 FT.	NOTE B:
3	A THROUGH H (INCLUSIVE)	24,572	6,125	40 FT.	NOTE B:
4	RETAIL, HOME IMPROVEMENT CENTER	N/A	144,615	40 FT.	4.2
5	A THROUGH H (INCLUSIVE)	22,352	5,700	40 FT.	NOTE B:
6	DRIVE THRU CAR WASH	10,025	2,036	40 FT.	NOTE B:
	SUB-TOTAL	N/A	186,909	40 FT.	4.2
	TOTAL	N/A	186,909	40 FT.	4.2

* Includes the Garden Center Area

Note A: Schedule of Tenant Type per B-2 Zoning for each lot. Depending on size, one use as described would envelope each individual lot, unless adequate building area would permit multiple users:

i. Permit Uses of B-2 Business District

- A. Retail Sales of Goods
- B. Business Office
- C. Professional Office
- D. Banks or Financial Companies
- E. Restaurants (Maximum of one Fast Food Restaurant which must be located north of the Main Entrance along 70th Street)
- F. Dry Cleaners
- G. Alcoholic Beverage Sales for On Premises Consumption Pursuant to Sec. 27.63.680. (No facility or business shall be with on-sale alcohol as its primary source of business or service).
- H. The following uses will not be permitted along South 70th Street for this project:
 - Automobile wash facilities
 - Tents or other temporary structures for temporary or seasonal sale of goods at retail (fireworks, Christmas trees, etc.)

Note B: Off Street parking shall be in conformance with Lincoln Municipal Code Chapter 27.67.

Note C: The hours of operation of the shopping center shall only be allowed between 5:00 a.m. to 12:00 midnight, except users located upon lot 1, which are permitted to operate 24 hours per day.

Note D: Maximum Building height shall be in conformance with Lincoln Municipal Code Section 27.31.090 (a) and 27.03.130.

Note E: All Buildings shall conform to the architectural design theme as shown on attached sheets 1.5a and 1.5b in the A

Note F: Lot signs permitted by Lincoln Municipal Code Section 27.69.046 will be shown on individual building permit site

Note G: Two thirds of the parking lot lighting, except for security lighting, shall be shut off after business hours.

Note H: A blanket permanent easement for gas, power, cable, and telephone will be provided excluding building envelopes, relocation of existing utilities shall be done at the owner's expense.

Note I: An administrative amendment shall be issued by the Planning Director for all drive through facilities before issuance of a building permit.

Note J: The seasonal swing area north of the home improvement garden center may be used for the display of landscape material only.

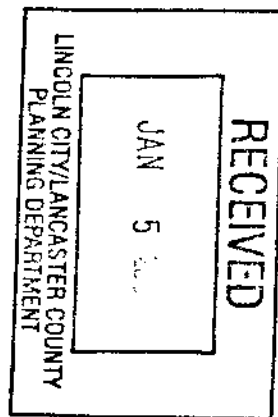
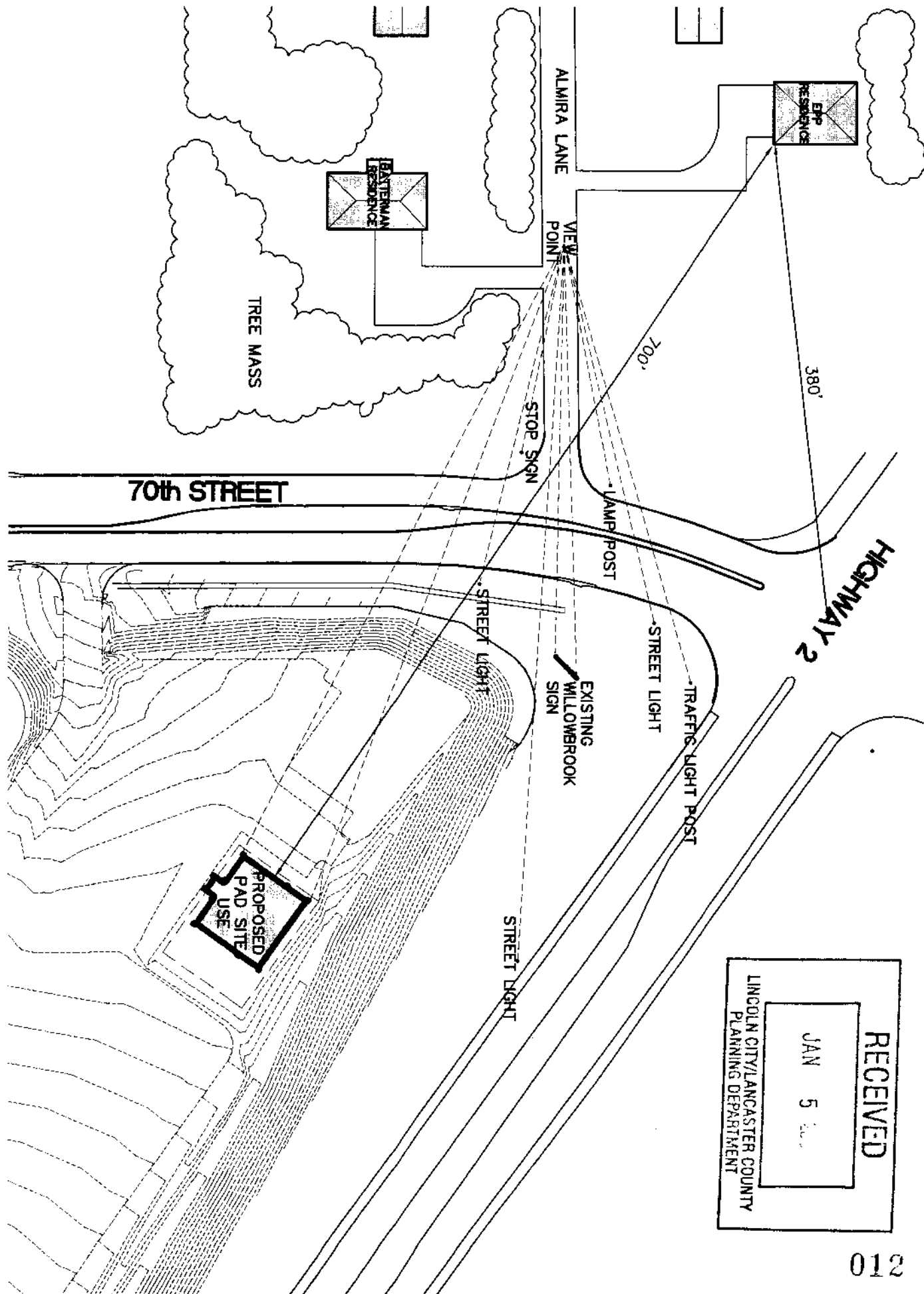
Note K: No service station or convenience store shall be allowed.

Note L: The Planning Director has the authority to approve administrative final plats based upon Use Permit No. 132.

PLAN AT HIGHWAY 2

SCALE :

1" = 100' 0"



012

A1.1

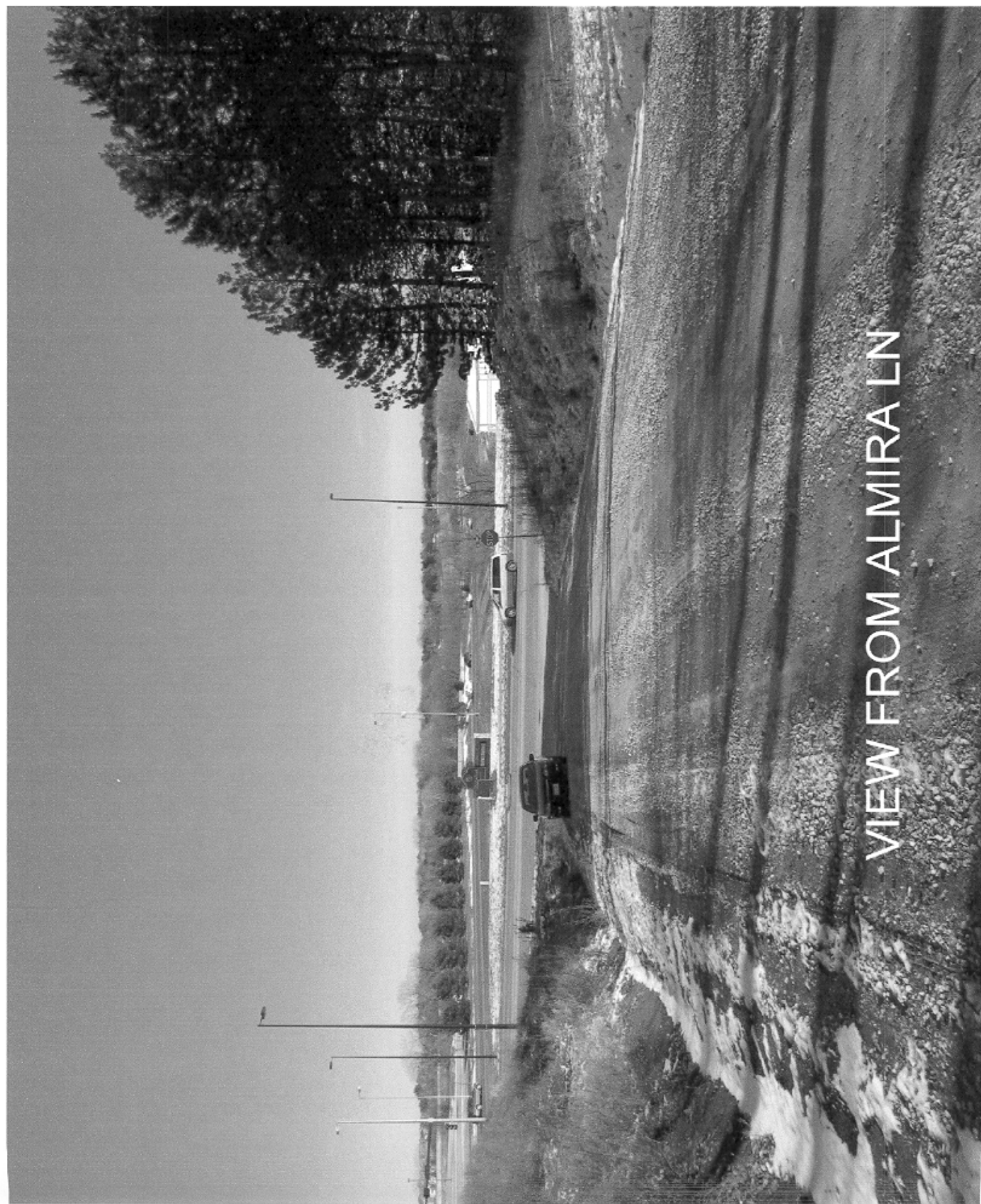
Michael S. Bott & Associates Architects

Suite 102 Lincolnshire Square 1540 South 70th Street Lincoln, Nebraska 68506 Ph: 4021 483-4024 P.C.
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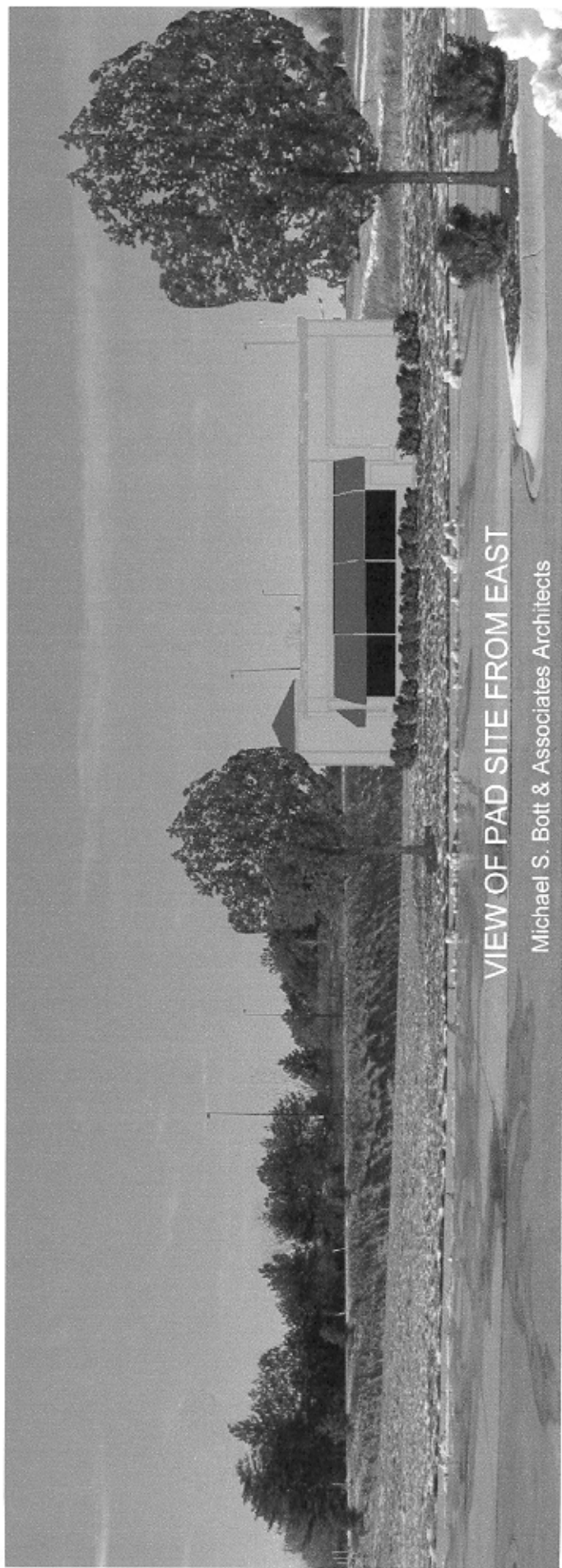
WILLOWBROOK I.H.O.P.

JOB NO. 04067

12/7/04



VIEW FROM ALMIRA LN



VIEW OF PAD SITE FROM EAST

Michael S. Bott & Associates Architects